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5-9.001

Establishment

The Policy, Legislation, and Special Litigation Section was created on March 16, 1979, by Environment and Natural Resources Division Directive No. 4-79.

5-9.100 Area of Responsibility

The Policy, Legislation, and Special Litigation Section performs policy planning for the Division including review of existing policy and programs, analysis and initiation of new policy, revision of management systems and integration of policy changes in budget submissions. This Section also drafts proposed legislation, reviews and reports on bills of interest to the Division, and develops litigation programs designed to meet new nonroutine problems. Most of the special litigation is developed when a client agency presents a legal problem of a unique nature that has not been previously dealt with in the routine program of the Division. In this regard, Policy, Legislation, and Special Litigation is also responsible for the filing of *amicus curiae* briefs in cases involving issues which affect the Environment and Natural Resources Division's areas of responsibility, unless those cases are specifically assigned to the Appellate Section. The Policy, Legislation, and Special Litigation Section also tracks citizen enforcement actions under the Clean Water Act and Clean Air Act, reviews proposed consent judgments in such actions, handles the Division's FOIA requests and congressional correspondence, and advises the Division on ethics matters.

5-9.120 Statutes Administered

The Policy, Legislation, and Special Litigation Section is not limited to a specific area of statutory responsibility. Rather, the Section supervises and conducts litigation arising under numerous federal statutes, as well as under treaties and agreements with Indians, Executive Orders, regulations of the various departments and agencies, the common law, and the laws of the various States. The Policy, Legislation and Special Litigation Section has sole responsibility for litigating cases arising under the Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. App. § 2101. In addition, the Section is responsible for administering and/or conducting congressionally mandated studies and reports, such as those required by section 301(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Uranium Mill Tailings Radiation Control Act 1978, 42 U.S.C. §§ 2021 and 1901 *et seq.*, and the Asbestos School Hazard Detection and Control Act of 1980, 20 U.S.C. § 3601 *et seq.*

5-9.200 Organization

The Section is administered by a Chief and an Assistant Chief. The work of the Section is assigned among staff attorneys according to experience and workload.

5-9.300 Supervision and Handling of the Policy, Legislation, and Special Litigation Section Cases -- Requests for Instructions

All requests for instructions and guidance relating to the prosecution or defense of actions under the jurisdiction of the Policy, Legislation, and Special Litigation Section shall be referred to the Chief of the Policy, Legislation, and Special Litigation Section of the Environment and Natural Resources Division of the Department of Justice, Washington, D.C. 20530 (202-514-1442).

5-9.320 Actions Not Subject to Direct Referral to United States Attorneys

Responsibility for handling of cases under the supervision of the Policy, Legislation, and Special Litigation Section is assigned by the Chief of the Section under the provisions of USAM 5-1.322 through 5-1.326.

5-9.321 Prior Authorization Needed to Initiate Action

No case under the supervision of the Policy, Legislation, and Special Litigation Section may be initiated by a United States Attorney without the prior authorization of the Assistant Attorney General, who shall sign the complaint prior to its being filed. *See* USAM 5-1.302.

5-9.500 General Procedures in District Court Litigation

The general instructions set forth in USAM 5-5.100 *et seq.*, with respect to handling of litigation apply in every respect to the litigation of the Policy, Legislation, and Special Litigation Section.

5-9.600 Settlement and Dismissal of Cases

No claim or case under the jurisdiction of the Policy, Legislation, and Special Litigation Section may be settled or dismissed without specific or delegated authority from the Attorney General. *See* USAM 5-5.210 *et seq.*

5-9.620 Transmittal of Compromise Offer to Policy Legislation, and Special Litigation Section; Recommendations With Respect to

Where compromise in a case other than a direct referral case is offered to a United States Attorney, he shall require the offeror to reduce the proposal to writing and to submit with it a cashier's or certified check, bank draft, or money order for the amount offered, drawn or endorsed unconditionally to the order of the Treasurer of the United States. Where a large sum is involved, a token deposit is acceptable. The United States Attorney then shall forward to the Department the written offer, this recommendation and the reasons therefor, and a statement of the debtor's financial status.

The recommendation should be guided by the principles that compromise offers cannot be accepted unless (a) there is doubt as to whether judgment can be secured for an amount larger than that offered in compromise, (b) there is doubt as to whether an amount larger than that offer can be collected, although a judgment has been or can be secured, or (c) the probable cost of collection exceeds the difference between the amount recoverable and the amount offered.

The financial statement need not be forwarded where the offer is recommended for acceptance solely because there is doubt as to whether judgment can be secured for an amount larger than that offered or because the probable cost of collection exceeds the difference between the amount offered and the amount recoverable.

5-9.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases

The authority of United States Attorneys to settle or dismiss direct referral cases under the supervision of the Policy, Legislation, and Special Litigation Section is set forth in USAM 5-5.230.